BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ALICE L. LAW Claimant	}
VS.	Docket No. 204,133
CROSS MANUFACTURING, INC. Respondent	
AND	
LIBERTY MUTUAL INSURANCE COMPANY Insurance Carrier.	}

<u>ORDER</u>

Respondent appeals from a preliminary hearing Order entered by Special Administrative Law Judge Leroy C. Rose on September 29, 1995. Appeals Board Member Kenton D. Wirth has disqualified himself from participating in this proceeding. Appeals Board Member Pro Tem Jeff C. Cooper has been appointed to participate in this discussion pursuant to K.S.A. 44-555(b)i.

ISSUES

Respondent contends that the evidence fails to establish that the injury arose out of and in the course of claimant's employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and briefs submitted by the parties, the Appeals Board finds the preliminary hearing Order should be affirmed.

Respondent argues that claimant's injuries did not arise out of and in the course of her employment because the injuries were intentionally caused by a coworker as a result of a purely personal dispute not related to work duties or conditions. Claimant's counsel suggests the dispute arose approximately two weeks earlier when claimant reported the coworker for leaving an entire bin of defective parts. Testimony provided at the Preliminary Hearing leaves unclear the reason the coworker struck claimant. The two had broken off a personal relationship some several months earlier. The Appeals Board does not consider it necessary at this point, however, to determine the reason the coworker struck claimant, because the evidence establishes that claimant's subsequent work aggravated

and worsened the original injury. The subsequent aggravation appears to be a compensable injury which caused claimant to be taken off work and to need additional medical treatment. For that reason the Order for preliminary benefits is affirmed.

The request by claimant's counsel for an award of attorney fees in connection with this appeal is denied. The Appeals Board also notes parenthetically that the witness's affidavit submitted with the brief of claimant's counsel has not been considered by the Appeals Board as it was not part of the record submitted to the Special Administrative Law Judge.

Wherefore, the preliminary hearing Order of Special Administrative Law Judge Leroy C. Rose dated September 29, 1995, should be, and the same is hereby, affirmed.

II IS SO URDERED.				
Dated this	_day of May 199	6.		
		BOARD MEMBER	· · · · · · · · · · · · · · · · · · ·	
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c:

Kent Roth, Great Bend, KS Jerry M. Ward, Great Bend, KS Leroy C. Rose, Special Administrative Law Judge Philip S. Harness, Director